

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

CHAMPAKLAL JAYANTILAL GADANI

Versus

LATABEN CHAMPAKLAL GADANI

Appearance:

MR ABHIJIT JOSHI for Petitioner

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 08/02/2000

ORAL JUDGEMENT

Heard learned counsel. This First Appeal filed

by the husband, arises out of the proceedings which were held under the Hindu Marriage Act whereby a decree had been passed for dissolution of marriage on the basis of an earlier decree of judicial separation. By the judgement and award dtd. 29th October, 1999, the Judge, City Civil Court at Ahmedabad has allowed the Hindu Marriage Petition NO.366/96 as was filed by the husband. The marriage of the parties to the petition which was solemnised on 10th December, 1992, has been dissolved by the decree of divorce and the custody of the son has been allowed to be retained by the mother and that of the daughter with the father i.e. the present appellant who was original petitioner. This part of the decree is not contested by the present appellant.

2. What is challenged before this Court is the later part of the decree whereby the Court has ordered that the wife and the son shall respectively get a sum of Rs.2000/-per month, Rs.1200/-- per month towards the alimony and maintenance under Sec.25 and 26 of the Hindu Marriage Act from the date of the order i.e. 29th October, 1999, with a further condition that wife shall be entitled to move the Court in the event of defaults for three consecutive months on the part of the husband to pay the amount of permanent alimony and seek direction for getting the deduction from his salary directly. This part of the decree with regard to payment of permanent alimony and maintenance has been challenged on the ground that earlier an order had been passed by the Extra Assistant Judge, Kutchh at Bhuj in Hindu Marriage Petition NO.66/92 on 5/8/95, while granting the decree of judicial separation and accordingly the husband was already under an obligation to pay a sum of Rs.700/-- per month against the permanent alimony under Sec.25 and therefore, any application under Sec. 25 for increase in the permanent alimony should have been moved before the Court of Extra Assistant Judge, Kutchh at Bhuj and not before the Court where the petition for dissolution of marriage was filed and decided. It has been submitted that in this back ground, the Court of City Civil, Judge at Ahmedabad had no jurisdiction to grant permanent alimony as has been ordered by him while passing the decree of dissolution of marriage. It has also been submitted that in view of the impugned judgement and decree dtd. 29th October, 1999, the appellant shall have to pay a sum of Rs.700/-- per month as per the order dtd. 5th August, 1995 passed by the Court of Extra Assistant Judge, Kutchh at Bhuj and will also have to pay the amount as has been ordered by the Court of Civil Judge at Ahmedabad on 29th October, 1999. In support of this contention, learned counsel for the appellant has also

cited a decision of Bombay High Court in the case of Jagdish Vs. Bhanumati reported in AIR 1983 Bombay page 297.

3. I have considered the submissions made by the learned counsel for the appellant. It is, of course true that the order with regard to permanent alimony of Rs.700/-- p.m. had been passed in the year 1995 by the Extra Assistant Judge, Kutchh at Bhuj in Hindu Marriage Petition NO.66/92 i.e. in the petition which had been filed for judicial separation by the husband under Sec.10, but this Court finds that the Court of City Civil Judge at Ahmedabad while passing the impugned order on 29th October, 1995, has taken note of that order with regard to payment of Rs.700/-- per month as had been passed earlier in 1995 by the Extra Assistant Judge, Kutchh at Bhuj. The Court of City Civil Judge at Ahmedabad has found that the husband's salary after involuntary deductions comes to Rs.8345/-- as in April, 1998. The Court has considered possible rise in Dearness Allowance, and opined that the amount of alimony was required to be enhanced. The Court has also noticed that there was not an iota of evidence to show that the husband had provided any residential house or any other amenities to the wife and son. Considering all these aspects and the lapse of time between the date on which the order had been passed earlier in 1995 and the date of impugned order, he has directed payment of Rs.2000/-p.m. for wife and a sum of Rs.1200/-- p.m. for son. Looking to the facts in entirety, this court is also of the opinion that the amount as has been awarded by the Court of City Civil Judge, Ahmedabad to the wife against whom the decree of judicial separation had been passed on the ground that she was a lady of unsound mind and to the son, cannot be said to be unreasonable or excessive. The apprehension of the appellant that he will be required to pay Rs.700/-p.m. separately as was ordered on 5th August, 1995 to the wife in terms of the order passed by the Extra Assistant Judge, Kutchh at Bhuj and further an amount of Rs.3200/-- as ordered by the Court of City Civil Judge at Ahmedabad is wholly unfounded. The Court itself has observed that the amount of permanent alimony and maintenance was required to be enhanced and therefore, it is a clear cut case of enhancement of the amount of permanent alimony and maintenance under Sec. 25 and 26 of the Hindu Marriage Act from that of Rs.700/-- to Rs.3200/-- in all (Rs.2000/-- to the wife and Rs.1200/-to the son). Since the apprehension of the appellant is unfounded and this Court finds that the order which is impugned before this Court is just and proper, there is no question of any interference by this

Court. The decision of the Bombay High Court (Supra) on which the learned counsel for the appellant has placed reliance is of no help to the appellant in the facts of the present case. Once the Court of City Civil Judge at Ahmedabad was seized with the petition filed by the husband himself merely because earlier order had been passed by the Court of Extra Assistant Judge Kutchh at Bhuj with regard to the permanent alimony, in the proceedings for judicial separation, it could not come in the way of Court of City Civil Judge, at Ahmedabad so as to enhance the amount of the permanent alimony and maintenance. The proceedings through Hindu Marriage Petition No.66/92 had been initiated by the husband before the Court of Extra Assistant Judge, Kutchh at Bhuj and the proceedings before the Court of City Civil Judge at Ahmedabad were also initiated by the husband and therefore, no useful purpose could be served by multiplicity of proceedings in different Courts, and if the Court of City Civil Judge at Ahmedabad has passed an order with regard to enhancement of permanent alimony and maintenance, the same cannot be challenged on the ground that the wife should have moved the earlier Court of Extra Assistant Judge, Kutchh at Bhuj for enhancement. It is an admitted position that the wife is living at Ahmedabad where the marriage had been solemnised way back on 10th December, 1982. The petition for judicial separation had been filed by the husband before the Extra Assistant Judge, Kutchh at Bhuj because at that time he was serving at Gandhidham. At present both the parties are residing at Ahmedabad and the Petition No.366/96 was also filed at Ahmedabad by the husband. In the facts of the case, it would be wholly unrealistic and burdensome to both the sides if they are asked to go to Kutchh Bhuj from Ahmedabad to enter into the third inning of litigation for alimony and maintenance when both are living at Ahmedabad where the marriage was solemnised and where the marriage was sought to be dissolved which has, in fact been dissolved. This court fails to find any justification or wisdom in this self-inflicting hypertechnical objection raised on behalf of the appellant husband and the same is hereby rejected.

4. The order with regard to permanent alimony and maintenance as has been passed by the Court of City Civil Judge at Ahmedabad after taking into consideration the order as had been passed by the Extra Assistant Judge, Kutchh at Bhuj in H.M.P. NO.66/92 on 5/8/95 and the impugned part of the order as has been passed by the Court of City Civil Judge at Ahmedabad which has been made the subject matter of challenge in the present appeal before this Court is an order which is just and

proper, it seeks to render substantial justice between the parties, it does not suffer from any infirmity. The apprehension of the appellant with regard to double payment is wholly unfounded, and therefore, this Court does not find any ground whatsoever to interfere with such just and proper order passed by the Court after hearing both the sides and after taking into consideration all the relevant aspects in detail. In the opinion of this Court, this Appeal is wholly misconceived and is not worth entertaining. There is no substance in the appeal. The same is hereby dismissed.

5. Since the Appeal itself has not been entertained, and dismissed, there is no question of any stay order in the Civil Application for stay and the same is also rejected.

Date : 8/2/2000. (M.R. CALLA, J.)

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